

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

MAGDA QUESADA,
LUIS QUESADA,

Plaintiffs,

DENIS McDONOUGH, SECRETARY OF THE
UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,

Involuntary Plaintiff,

Case No.: 21-CV-1402

v.

WALMART, INC.,
WAL-MART REAL ESTATE BUSINESS TRUST,
WAL-MART STORES EAST LP,

Defendants.

NOTICE OF REMOVAL

Walmart, Inc., Wal-Mart Real Estate Business Trust, and Wal-Mart Stores East, LP (collectively, “Walmart Defendants”), by their attorneys, Gass Turek LLC, hereby remove this civil action to the United States District Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1441. In support of removal, the Walmart Defendants state as follows:

1. **State Court File.** On November 4, 2021, Plaintiffs Magda and Luis Quesada initiated this action by filing a Complaint in the Circuit Court of Milwaukee County, State of Wisconsin, Case Number 21-CV-6829 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), a complete copy of all process, pleadings, and orders served upon the Walmart Defendants in the State Court Action is attached as Exhibit A.

2. **Removal is Timely.** Walmart, Inc., Wal-Mart Real Estate Business Trust, and Wal-Mart Stores East, LP was each personally served with the Summons and Complaint in the State Court Action on November 10, 2021. See Ex. A at Dkt. No. 7; Ex. B. Because this

Notice of Removal is being filed within thirty days following service, removal is timely pursuant to 28 U.S.C. § 1446(b).

3. **Original Jurisdiction.** This case may be removed from the State Court for Milwaukee County to the United States District Court for the Eastern District of Wisconsin because it has original jurisdiction over the litigation pursuant to 28 U.S.C. § 1332 based on the diversity of the parties.

4. **Citizenship of Plaintiffs.** Plaintiffs Magda and Luis Quesada are natural persons and citizens of Wisconsin. Ex. A at Dkt. No. 7, ¶¶ 1-2.

5. **Citizenship of Involuntary Plaintiff.** Denis McDonough, Secretary of the United States Department of Veterans Affairs, is named as an Involuntary Plaintiff as the Secretary of the agency responsible for administering the Civilian Health and Medical Program of the Department of Veterans Affairs that allegedly paid certain medical bills or expenses on behalf of its Madga Quesada and is allegedly entitled to a right of subrogation. Exhibit A at Dkt. No. 7, ¶ 3. Therefore, Denis McDonough is a nominal party in this action, as opposed to a real party in interest, and his citizenship is irrelevant to determining whether complete diversity exists. *See Vandervest v. Wisconsin Cent.*, 936 F. Supp. 601, 604-05 (E.D. Wis. 1996) (plaintiff's insurers with a potential subrogation interest were nominal parties, and not real parties to the action, for purposes of determining whether complete diversity existed).

6. **Citizenship of the Defendants.** Walmart Inc. is a Delaware corporation with its principal place of business in Arkansas. Pursuant to 28 U.S.C. § 1332(c)(1), Walmart, Inc. is deemed to be a citizen of Delaware and Arkansas. See Ex. A at Dkt. No. 7, ¶ 4; Ex. C. Wal-Mart Real Estate Business Trust is a Delaware statutory trust of which the sole unit holder is Wal-Mart Property Co. Wal-Mart Property Co. is a Delaware corporation with its principal place of business in Arkansas. Pursuant to 28 U.S.C. § 1332(c)(1), Wal-Mart Real Estate Business Trust is deemed to be a citizen of Delaware and Arkansas. See Ex. A at Dkt. No. 7, ¶ 5; Ex. D. Wal-Mart Stores East, LP is a limited partnership of which WSE Management, LLC is the sole general partner and WSE Investment, LLC is the sole limited partner. The sole

member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. The sole member of Wal-Mart Stores East, LLC is Walmart Inc. Walmart, Inc. is a Delaware corporation with its principal place of business in Arkansas. Pursuant to 28 U.S.C. § 1332(c)(1), Wal-Mart Stores East, LP is deemed to be a citizen of Delaware and Arkansas. See Ex. A at Dkt. No. 7, ¶ 6; Ex. E.

7. **Complete Diversity of Citizenship.** Both at the time the Complaint was filed and now, there is complete diversity of citizenship because the Plaintiffs are citizens of Wisconsin and the Walmart Defendants are citizens of Delaware and Arkansas. Moreover, because the Walmart Defendants are not citizens of the State of Wisconsin, they may remove the action to this Court. 28 U.S.C. § 1441(b)(2).

8. **Amount in Controversy.** Plaintiffs allege Madga Quesada slipped and fell at a Walmart store in Milwaukee, Wisconsin, and that as a result, she has:

sustained serious and permanent injuries, including, but not limited to, injuries to her foot and hip, and has and will continue to endure pain and suffering, has and will continue to incur medical expenses for her care and treatment, has and will continue to experience a loss of earning capacity, and has and will continue to suffer a diminished capacity to fully enjoy life, all to her past and future harm and damage.

Ex. A at Dkt. No. 7, ¶ 11. In addition, Plaintiff Luis Quesada alleges that as a result of his wife's injuries he has been denied the society and companionship of his wife. *Id.* ¶ 12. The amount in controversy exceeds \$75,000.00.

9. **Venue.** Venue in this Court is proper under 28 U.S.C. § 1446(a) because this case was pending in the Circuit Court of Milwaukee County, Wisconsin. This Court is the district and division "embracing the place where [the state court] action is pending." 28 U.S.C. § 1441(a).

10. **Service of Notice.** Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice is being served on counsel for the Plaintiffs and Involuntary Plaintiff and filed with the Circuit Court for Milwaukee County.

WHEREFORE, the Walmart Defendants respectfully request that this action be removed from the Circuit Court of Milwaukee County to the United States District Court for the Eastern District of Wisconsin.

Dated this 10th day of December, 2021.

GASS TUREK LLC
Counsel for Defendant

s/Rachel E. Potter

Tamar B. Kelber, SBN 1101802

kelber@gasszurek.com

Rachel E. Potter, SBN 1102790

potter@gasszurek.com

241 North Broadway, Suite 300

Milwaukee, WI 53202

T: 414-223-3300

F: 414-224-6116